

84-615

Office - Supreme Court, U.S.
FILED

SEP 14 1984

ALEXANDER L. STEVAS,
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

RONALD STRAWSER, PETITIONER

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Richard L. Anderson
Attorney for Petitioner
Ronald Strawser
P.O. Box 612
Country Club Center
Kimberling City, MO 65686
(417) 739-4289

3248



QUESTION PRESENTED

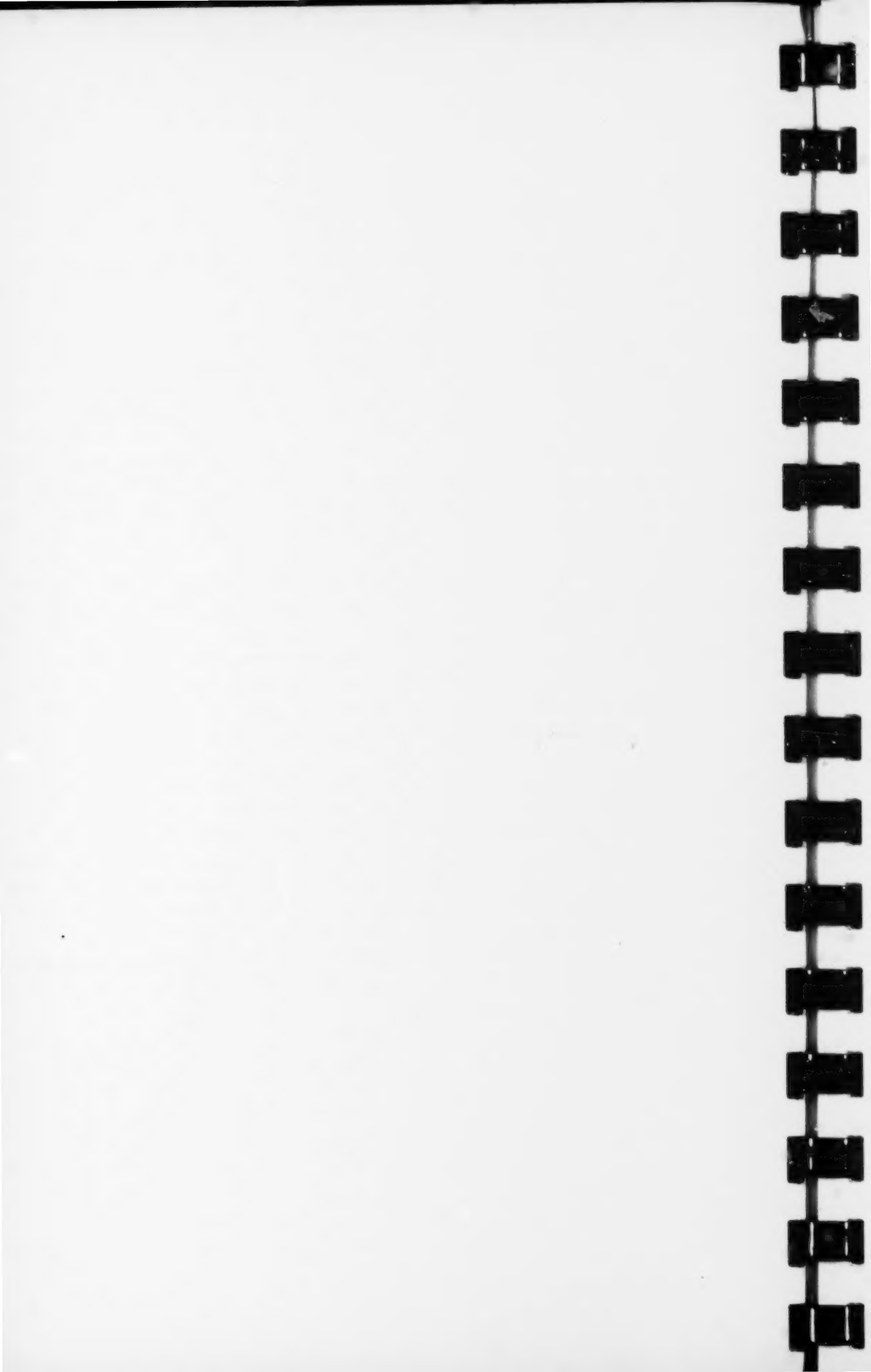
Whether the government breaches an implied term of "good faith" in plea negotiations if it induces a criminal defendant to plea "guilty" by agreeing to recommend a probationary sentence, believing at the time it induces such plea and makes the agreed recommendation of probation:

(A) defendant is guilty of an earlier offense of similar character within the same jurisdiction occurring a matter of weeks prior to the offense being pled; and

(B) it intends to reindict the defendant at a future date on the earlier offense; and

(C) it does not intend to repeat its recommendation of probation as an agreed disposition in the second case; and

(D) it knows the natural result of defendant's plea of guilty to the first charge (induced by the recommendation of probation) will be to substantially prejudice his ability to maintain his innocence as to the second charge due to the ability of the government to use the first conviction, garnered through promised recommendation of probation, as "impeachment" at any trial of the second charge.



II

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW . . .	1
TABLE OF AUTHORITIES	III
CITATION TO OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTION AND STATUTES INVOLVED .	2
STATEMENT OF FACTS	3
CONCLUSION	12
APPENDIX "A"	1a
APPENDIX "B"	14a
APPENDIX "C"	15a



III

TABLE OF AUTHORITIES

CASES:

<u>Santobello v. New York</u> , 404 U.S. 257, 262 (1971)	12
<u>Trotter v. United States</u> , 359 F.2d 419, 420 (2d Cir. 1966) . . .	12

CONSTITUTION, STATUTES, AND REGULATIONS:

United States Constitution, Fifth Amendment	2, 3
--	------



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. _____

RONALD STRAWSER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

Richard L. Anderson, Esq., on behalf of
Ronald Strawser, appellant, petitions for a
writ of certiorari to review the judgment
of the United States Court of Appeals for
the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals was filed July 16, 1984, and is included within the appendix of this petition, as "Appendix A", and is not yet reported. There was no formal opinion of the district court.

JURISDICTION

The judgment of the court of appeals (Appendix B, *infra*) was entered on July 16, 1984. The judgment of the court of appeals was amended by order of the court of appeals filed July 24, 1984, appearing as "Appendix C". The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant



part:

No person shall * * * be deprived
of life, liberty, or property, without
due process of law * * *

STATEMENT

Appellant was convicted on January 27, 1983, of having possessed 430 pounds of marijuana with intent to distribute in June, 1981, in the central district of Illinois in violation of 21 U.S.C. 841(a)(1). Appellant's conviction was entered following his negotiation of a plea agreement with the government reserving him the right of appealing the limited question of whether or not the prosecution of the indictment is barred by the entry of a prior plea agreement between the government and the appellant, in a separate case. The court of appeals for the seventh circuit has ruled upon appellant's appeal by affirming the



conviction by the district court.

It is undisputed that in the time period encompassing June 1981 through August 1981, and ending September 1, 1981, appellant was engaged in a conspiracy to possess and distribute large quantities of marijuana within the jurisdiction of the United States District Court for the central district of Illinois. Pursuant to the conspiracy, marijuana in large quantities was in fact imported into the Springfield area and distributed.

On September 1, 1981, appellant was arrested near Andrew, Illinois, with four others, and investigation found him in possession with his co-defendants of approximately 2,000 pounds of marijuana. Video taped surveillance demonstrated the appellant and others distributing portions of the marijuana to vehicles arriving at



the storage house.

On September 15, 1981, Agent Koepp of the DEA testified before a grand jury in Springfield, Illinois, concerning the government's understanding of entries made in ledgers and notebooks recovered from the property occupied by defendants and others. The transaction which resulted in the conviction being appealed by this case was testified to by Agent Koepp, who indicated to the grand jury he believed the entry to refer to Michael and Ronald Strawser (appellant), residents of Iowa, and a transaction of June, involving 430 pounds of marijuana.

On September 16, 1981, counsel for appellant entered an oral plea agreement with the United States Attorney for the central district of Illinois, at Springfield, calling for appellant (who had



been arrested September 1, 1981) to receive a recommendation of five years probation in exchange for his providing the government (through the vehicle of an anonymous phone call) with the location of approximately 4,000 additional pounds of marijuana in the central district. The agreement was entered orally, the phone call placed, and the marijuana searched for and discovered as promised.

On September 29, 1981, appellant and four others were charged in a multi-count indictment arising out of their arrests on September 1, 1981. This would be the indictment upon which a Count would be selected for the defendant's plea of guilty, pursuant to the oral agreement of September 16, 1981, for the government's recommendation of probation.

The indictment, apparently drafted following the testimony of Agent Koepp



before the grand jury describing the June transaction as involving appellant, curiously referred to a conspiracy existing from on or about the 25th day of July, to and including September 1, 1981, and neglected to mention the June transaction. This omission failed to catch the attention of counsel.

Due to a disagreement between government counsel and appellant's counsel over whether the identity of the source of the information as to the 4,000 pounds given the government could be disclosed to co-defendants, the appellant and the government did not enter a written plea agreement until December 28, 1981.

At the time of the entry of the written plea agreement on December 28, 1981, more than three months had passed since the appellant had, in reliance upon



the oral agreement of the government to recommend probation, changed his position irrevocably by delivering the 4,000 additional pounds of marijuana. Similarly, more than three months had passed since the government's agent Koepp had testified before the grand jury as to the 430 pound transaction's identity with appellant.

With this knowledge and state of facts, the government entered an agreement with appellant which agreed, among other things, that five years' probation would be the appropriate sentence for the appellant, and that he could petition without objection for release from probation after having successfully completed two years of that term.

Appellant then believed the entire episode concluded. On August 24, 1982 defendant was then indicted for the charge



described in this case (the 430 pound incident) more than ten months after the testimony Agent Koepp had given the grand jury linking appellant to the offense.

Appellant found himself then in a position of no defense. At the time of the first charge in the 1981 indictment, defendant had a perfectly spotless record. Now he stood charged once more of an offense connected with distributing large quantities of marijuana but with the disadvantage of having a criminal conviction which would be impeachment at any trial he might have. Further, he found the promised probation, for which he had changed his entire position and entered an agreement he fully performed, was to be taken from him by the deceit of the United States.

The seventh circuit court of appeals



has said that appellant and his counsel could have guarded against this very result by placing an appropriate provision in the original plea agreement. This ignores the fact that the original plea agreement was not in writing, but oral, and provided only for the promise of probation in exchange for probation and that the appellant would not be called as a witness and his involvement in disclosing the location of the additional 4,000 pounds would not be disclosed.

The agreement of the parties was not a written agreement until December 28, 1981. It became a written agreement because the government had reneged on its agreement not to disclose appellant as the informant on the location of the 4,000 pounds; counsel objected to the Court and sought to prohibit the disclosure, and the Court then



told appellant and his counsel that it would not determine the terms of the oral agreement entered in the plea negotiation and did not wish to entertain evidence as to its terms. The government then announced if the terms of the agreement were in dispute there was no agreement. Defendant was boxed in by having already given all he had to give, and by having a judge inform him he would not examine the true oral agreement of the parties.

This was the scenario when the December 28, 1981, plea agreement was entered, annexed to the seventh circuit's opinion in the appendix. The "agreement" was not an agreement but simply the only alternative appellant had to elect. He had not only unalterably changed his position, but the very act he had committed pursuant to the agreement in turning over the

additional marijuana was evidence of his knowledge and guilt.

Defendant, reindicted for the June 1981 transaction, already convicted for the conspiracy artfully drawn not to include the June 1981 transaction, had no choice but to plead guilty and reserve his appeal on the issue of the broken agreement.

The government when it enters a plea agreement, oral or written, is entering a contract which must be fulfilled.

Santobello v. New York, 404 U.S. 257,262 (1971). Bad faith and trickery cannot be employed to deprive the appellant of the substance of his bargain, the promised probation. Trotter v. United States, 359 F.2d 419, 420 (2d Cir. 1966).

CONCLUSION

Appellant believes the factual basis of his complaints to be very simple, the



authority for the relief he requests
indisputably clear, and the justice of his
position obvious. The petition for a writ
of certiorari should be granted.

Respectfully submitted,

RICHARD L. ANDERSON
Attorney for Petitioner
P.O. Box 612
Country Club Center
Kimberling City, MO 65686
(417) 739-4289

September 14, 1984



APPENDIX "A"

In the

United States Court of Appeals

For the Seventh Circuit

No. 83-1251

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RONALD STRAWSER,

Defendant-Appellant.

Appeal from the United States District Court for the
Central District of Illinois, Springfield Division.
No. 80-30039—J. Waldo Ackerman, *Judge.*

ARGUED JANUARY 5, 1984—DECIDED JULY 16, 1984

Before ESCHBACH, POSNER, and COFFEY, *Circuit Judges.*

COFFEY, *Circuit Judge.* The defendant, Ronald Strawser, was convicted on November 8, 1983, of possession of 430 pounds of marijuana with intent to distribute in violation of 21 U.S.C. § 841(a)(1). The issue on appeal is whether the district court committed error in denying the defendant's motion to quash his prosecution based on his claim that the indictment violated the terms of an earlier plea agreement. We affirm.

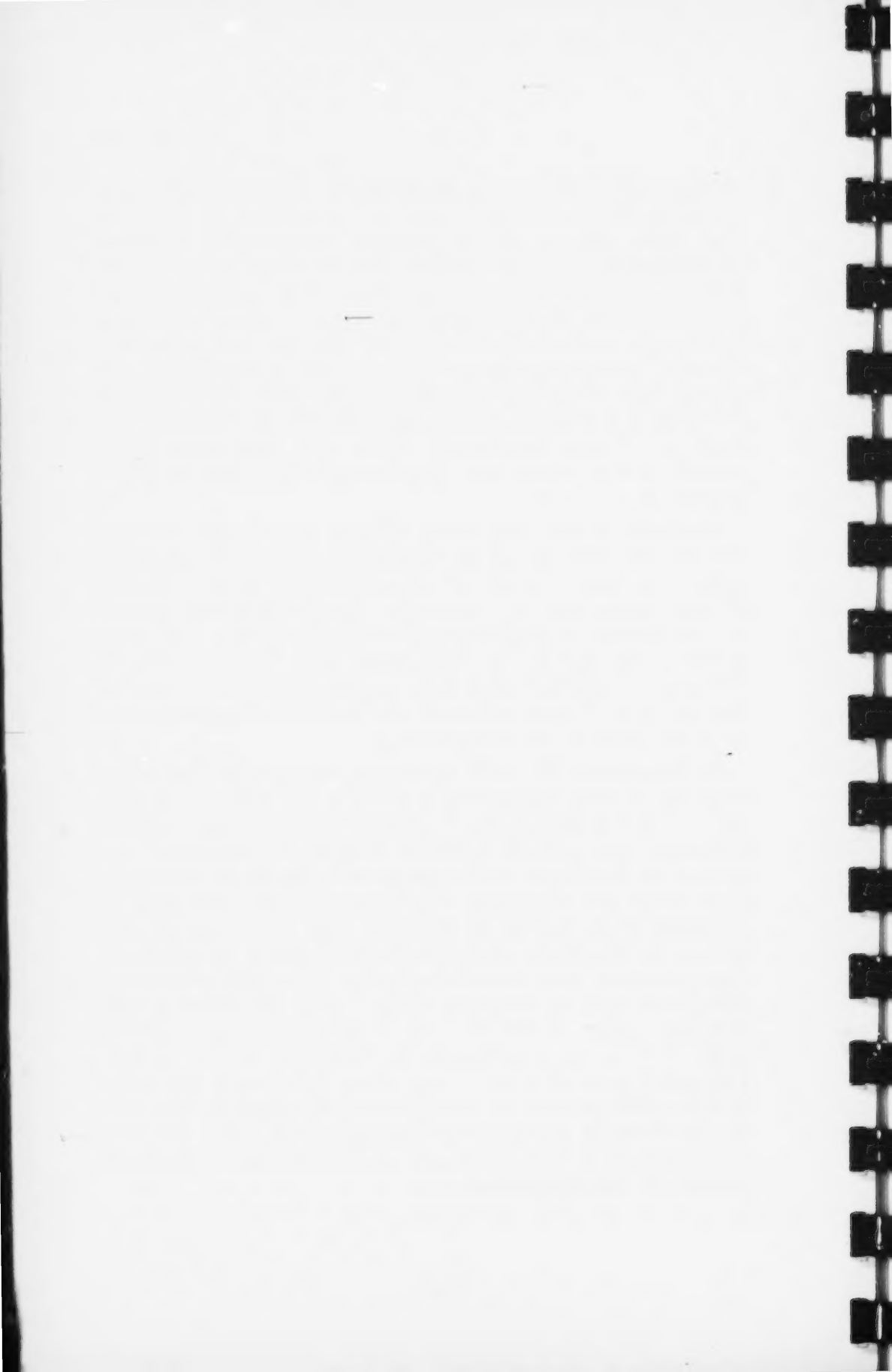
I.

The defendant's arguments on appeal relate to two separate indictments for marijuana trafficking and the scope of a written plea agreement arising out of the first

of those two indictments. Specifically, the first indictment concerns Strawser's activities on September 1, 1981. On that date, agents of the Illinois Division of Criminal Investigation and the United States Drug Enforcement Agency observed Strawser and four other individuals load fourteen bales of marijuana into a van parked outside a farmhouse near Andrew, Illinois. As the van departed, the arrests were made and 525 pounds of marijuana was seized. One of the individuals arrested with Strawser was carrying a briefcase containing \$135,000 in currency and records of past marijuana sales. An additional 1,000 pounds of marijuana was discovered in the nearby farmhouse.

Strawser states that some fifteen days later, on September 16, 1981, he orally agreed to provide information regarding the location of an additional large quantity of marijuana, and in exchange, the government agreed to recommend a probationary sentence in the case then under investigation. On that same date, based on the information Strawser provided, agents searched a barn on the Andrew, Illinois premises and uncovered approximately 4,300 pounds of marijuana.

On September 29, 1981, Strawser, along with four other individuals, was charged in a multi-count indictment arising out of the September 1 arrests (the first indictment). Strawser was named in three counts: one count of conspiracy to distribute and possess with intent to distribute more than one thousand (1,000) pounds of marijuana in violation of 21 U.S.C. §§ 841(a)(1), 846; one count of conspiracy to distribute and possess with intent to distribute approximately five hundred twenty-five (525) pounds of marijuana, also in violation of 21 U.S.C. §§ 841(a)(1), 846; and one count of distributing five hundred twenty-five (525) pounds of marijuana in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. This indictment did refer to the 4,300 pounds of marijuana discovered in the barn on the Andrew premises on September 16, 1981, but only as it related to the overt acts of three other defendants named in the indictment.



On December 4, 1981, the existence of the September 16th oral pre-indictment agreement was disclosed to the trial court during an in-camera hearing requested by Strawser's attorney. The hearing was requested because a dispute had arisen between Strawser and the government as to whether the prosecution would be allowed to disclose Strawser's cooperation with the government to his co-defendants. The prosecution argued that it had only agreed to delay disclosure, while Strawser contended that the oral agreement prohibited any disclosure of his cooperation with the government. The trial judge denied Strawser's request to block disclosure to his co-defendants and set aside the September 16 oral agreement because of the misunderstanding.

On December 28, 1981, a written plea agreement was presented to the trial court relating to the first indictment charges against Strawser. Therein Strawser agreed to plead guilty to one count of conspiracy to distribute approximately 525 pounds of marijuana in violation of 21 U.S.C. § 841(a)(1). In exchange, the government was to recommend probation to the court pursuant to Fed. R. Crim. P. 11(e)(1)(C), and, if approved by the court, the remaining two counts against Strawser were to be dismissed. (See Appendix.) The specific language of that plea agreement, however, did not include any additional promise to refrain from prosecuting Strawser for crimes which the government might thereafter become aware of as a result of any new or continuing investigation. In fact, Strawser confirmed this absence of any additional promises during the guilty plea hearing by specifically stating to the trial court that no promises had been made to him in connection with the plea agreement other than those recited therein.¹ Following his subsequent review of the defendant's presentence report, the trial judge accepted

¹ At the conclusion of the Fed. R. Crim. P. 11 admonishments during the guilty plea hearing, the trial judge inquired, "Any threats or promises been made to get you to enter this plea?" The defendant Strawser replied, "No, sir."

the plea agreement and entered a judgment of conviction. Pursuant to the terms of that agreement, Strawser was sentenced to a period of five years probation supervision.

As noted earlier, this appeal involves two separate and distinct indictments, the second of which was issued on August 24, 1982. Therein Strawser was charged with one count of unlawful possession with intent to distribute 430 pounds of marijuana on June 6, 1980, in violation of 21 U.S.C. § 841(a)(1). This second indictment did not arise out of the information Strawser provided to the government under the September 16 oral agreement, rather, the offenses charged in the August 24, 1982 indictment were discovered as a result of the government's continuing investigation of the records seized in the September 1, 1981 raid of the Andrew, Illinois farmhouse.

On September 30, 1982, Strawser filed a Motion to Quash the second indictment contending that the offense charged was known to the government, not only prior to the formal written plea agreement presented to the trial court on December 28, 1981, but also prior to the earlier September 16 oral agreement. Specifically, the defendant points to the September 15, 1981 grand jury testimony of a DEA case agent—which provided no more than a general description of the marijuana sales records seized in the September 1 raid on the Andrew premises—and argues that this evidence demonstrates the government's complete knowledge of Strawser's chronology of criminal acts.

On November 8, 1982, Strawser pleaded guilty to the second indictment's charge of unlawful possession with intent to distribute 430 pounds of marijuana. The guilty plea was entered pursuant to a second written plea agreement which provided that Strawser would receive a jail sentence of no greater than two years. The agreement also provided that Strawser would face no further prosecution arising from the case and that his right to appeal the denial of his Motion to Quash Prosecution under the second indictment would be preserved.

On January 27, 1983, a judgment of conviction for possession with intent to distribute 430 pounds of marijuana, in violation of 21 U.S.C. § 841(a)(1) was entered against Strawser pursuant to his second plea agreement. He was sentenced to a jail term of one-year and one-day under 18 U.S.C. § 4205(b)(2) along with a two-year special parole term to follow the term of his confinement. The defendant now appeals the district court's denial of his Motion to Quash Prosecution.

II.

As noted above, Strawser contends that the district court committed error in denying his motion to quash. In his view, the August 24, 1982 (second) indictment violated the terms of the first written plea agreement between Strawser and the government because of the government's alleged knowledge, at the time that agreement was entered, of the full extent of Strawser's involvement in the sale of marijuana in the Central District of Illinois as charged in the second indictment. It is well established that when a plea agreement rests in any significant degree on a promise or agreement of the government, which induces that plea, the promise must be fulfilled. *Santobello v. New York*, 404 U.S. 257, 262 (1971); *United States v. Cook*, 668 F.2d 317, 319 (7th Cir. 1982); *See also Mabry v. Johnson*, 52 U.S.L.W. 4751, 4752 (U.S. June 11, 1984), *reversing* 707 F.2d 323 (8th Cir. 1983). The existence of a plea agreement is a factual issue, *see De Marco v. United States*, 415 U.S. 449 (1974); *United States v. Arnett*, 628 F.2d 1162, 1164 (9th Cir. 1979), and the district court's determination of the question can be set aside only if found to be clearly erroneous. *United States v. Cain*, 587 F.2d 678, 680 (5th Cir.), *cert. denied*, 440 U.S. 975 (1979). *See also United States v. Pihakis*, 545 F.2d 973, 974 (5th Cir.) (*per curiam*), *cert. denied*, 434 U.S. 818 (1977). According to the Supreme Court, a finding is " 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake

has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). In this case we hold that the district court was not clearly erroneous in its finding that the government made no express or implied promises relating to the offenses charged in the August 24, 1982 (second) indictment when the parties entered the first plea agreement on December 28, 1981.

During oral argument, the defendant asserted that the government knew of his involvement with the 430 pounds of marijuana charged in the second indictment at the time the first written plea agreement was entered,² and that an implied promise existed between the parties which provided that he would not be prosecuted for any additional offenses discovered as a result of the continuing investigation of the records seized on September 1, 1981. He bases his argument on the fact that the first plea agreement provided for probation and in addition recited that a petition for termination of probation would not be opposed by the government if after two years Strawser had not committed another infraction. According to Strawser, it would be inconsistent for the government to agree both to probation and not oppose termination of probation after two years of good conduct, if it knew of the offense charged in the second indictment and intended to seek an indictment and ultimate imprisonment therefor.³ Thus, under Strawser's argument the government impliedly agreed not to prosecute for this offense since it already had knowledge of its occurrence.

² The defendant contends the government had knowledge of the transaction charged in the second indictment as early as the September 16, 1981 oral argument.

³ We note that Strawser's argument is somewhat of a double-edged sword as one can persuasively contend that the very fact the government agreed to probation, and not to oppose termination of such probation after two years of good conduct, indicates that they did not have knowledge of his other criminal activity, for which he was subsequently indicted, at the time the first plea agreement was entered. It is for obvious reasons hard to believe that the government would enter such an agreement if it had had knowledge of Strawser's other crimes at the time.



The trial court, based upon its review of the law, denied the defendant's motion to quash and thus implicitly found no evidence to support Strawser's contention that the government promised, in the first written plea agreement, not to prosecute him for other crimes committed in its jurisdiction which might come to light at a later date through its continuing investigation. Our examination of the record discloses that the first written plea agreement (see appendix) contains no such promise or any language even suggesting such a promise.

As previously noted, Strawser and his attorney expressly stated during the initial guilty plea hearing that no promises had been made to him in connection with the written plea agreement other than those enunciated therein. We recognize that a prosecutor's bad faith promise in connection with a plea agreement may involve "trickery so flagrant as to violate appellant's constitutional rights." *Trotter v. United States*, 359 F.2d 419, 420 (2d Cir. 1966) (per curiam). However, this court will affirm the trial court's denial of a Motion to Quash Prosecution where the record fails to reflect such trickery on the part of the prosecutor. A plea agreement is a contract. *Brooks v. United States*, 708 F.2d 1280, 1281 (7th Cir. 1983). "Resolution of the good-faith disputes over the terms of an agreement should be made by the district court, to whom the plea was originally submitted, 'on the basis of adequate evidence.'" *United States v. Arnett*, 628 F.2d 1162, 1164 (9th Cir. 1979) (quoting *United States v. Simmons*, 537 F.2d 1260 (4th Cir. 1976)). The disputed terms of such a plea agreement are to be determined by the district court by objective standards. *Arnett*, 628 F.2d at 1164 (citing *Johnson v. Beto*, 466 F.2d 478, 480 (5th Cir. 1972)).

Strawser's argument of implied promise rests solely on the testimony presented to a grand jury of a DEA case agent on September 15, 1981. Strawser contends that this testimony demonstrates that the government had complete knowledge of his marijuana trafficking activities prior to his first written plea agreement. Examination of that testimony reveals, however, that it was merely a



general presentation of the records seized in the raid of the Andrew, Illinois site. When DEA Special Agent Koepp testified before the grand jury on September 15, 1981, concerning the sales records seized with the 525 pounds of marijuana on September 1 (the subject of the first indictment), he specifically began his testimony with the caveat that the government's investigation of those records was not complete at that time.⁴ There was no evidence indicating that the government had detailed and specific knowledge (which the defendant appears to allege) of Ronald Strawser's involvement in marijuana trafficking beyond the particular offenses recited in the first indictment.

We further note that the records presented to the grand jury made no specific mention of Ronald Strawser's name. In addition, the entries did not indicate that any sale or possession of marijuana occurred within the Central Dis-

⁴ The relevant portion of Agent Koepp's testimony is as follows:

"Q. Specifically with respect to page 1 of this particular document, could you enlighten the Grand Jury as to your understanding of the entries on that page? . . .

"A. If I may preface those remarks by saying, first of all, that we are in the process of analyzing all of these documents. We seized a great number of records and computations which are now presently being analyzed by intelligence analysts who work for the Illinois Division of Criminal Investigation. So, my remarks with regard to these, to these documents are at this time at best sort of a first glance so to speak, and I would like to make these remarks to give you an opportunity to get a better understanding of what kind of records we have seized in this investigation.

"Q. Mr. Koepp, is it your intention to either directly or from other DCI agents present the findings of the analysis of these same records at a later date?

"A. Yes, sir, that's correct.

"Q. Now, for purposes of today's appearance can you go ahead and describe what your general understanding at this time is of these entries?"



trict of Illinois. Nor did the records contain any entry for June 6, 1981, the date on which Ronald Strawser was in possession of 430 pounds of marijuana with intent to distribute according to the charge of the August 24, 1982 (second) indictment. Based on the foregoing, we hold that it was not inconsistent or deceitful for the government to consent to a sentence of probation in the first plea agreement, as we do not find sufficient evidence in the record to establish that the government had any reasonably detailed knowledge of Ronald Strawser's involvement in the subsequently charged June 6, 1981 possession offense, at the time that agreement was consummated. Since the defendant has failed to establish the government's knowledge of his offense at the time of his first plea agreement, we do not find an implied promise in that agreement not to subsequently prosecute for such offense.⁵

⁵ Even if the government had knowledge of the June 6 offense we would not find the government in breach of the first written plea agreement by its pursuit of the second indictment. By its language and by Strawser's responses at his initial guilty plea hearing, it appears clear to this court that the first written plea agreement was only meant to cover the offenses charged in the first indictment. As our court recently reaffirmed, "[a] plea bargain is, in law, just another contract" *Brooks v. United States*, 708 F.2d 1280 (7th Cir. 1983). Thus, to establish that the plea agreement was intended to cover all other drug-related activity which might be discovered through analysis of evidence gained from the search and seizure leading to the first indictment, the defendant must show that such intent was reasonably understood by the parties to be the meaning of the terms of the agreement. See *Arnett*, 628 F.2d at 1164. The defendant has simply failed to make this showing. Since there is nothing in the language of the first plea agreement which would support such blanket immunity nor any evidence indicating an intent to cover offenses other than those charged in the first indictment, we find no breach arising out of the second indictment and hold that the denial of the Motion to Quash Prosecution was proper.

Note also that in his second plea agreement the defendant specifically protected himself from further prosecutions involving his activities with three named individuals (specifically Richard Schair, Albert Engle, and Michael Strawser) in the Southern and Central

(Footnote continued on following page)

Thus, there was no misrepresentation on the part of the government in its participation in the plea agreement.

In addition to the preceding arguments, Strawser appears to contend that the June 6 offense charged in the present (second) indictment, was, in fact, part of the conspiracy charged in Count I of the first indictment. As previously noted, that count was dismissed as part of the first written plea agreement. Citing *United States v. Phillips Petroleum Co.*, 435 F. Supp. 622 (N.D. Okla. 1977), he argues since Count I was dismissed pursuant to the first plea agreement, no further prosecution may be undertaken for offenses included in that count. While it is true that the government cannot reprosecute for crimes covered in Count I of the first indictment, there is no indication in the record, and Strawser supplies us with none, that establishes that the June 6, 1981 possession offense was, in fact, part of Count I of the first indictment. Count I charged Ronald Strawser and others with conspiracy to distribute marijuana from July 25, 1981 to September 1, 1981. Thus the June 6 offense does not even fall within the time frame of Count I. In addition, Count I only concerned transactions relating to the Andrew, Illinois farmhouse which was initially rented and occupied on July 25, 1981, over a month after June 6, 1981. Furthermore, nothing in Count I dealt with or referred to an agreement or transactions between Michael Strawser (co-defendant in the second indictment) and Ronald Strawser, nor for that matter was Michael Strawser even mentioned in the first indictment. Thus, the June 6 offense was not part of the conspiracy charged in Count I of the first indictment and thus the dismissal of that count pursuant to the first plea agreement did not pre-

⁵ continued

Districts of Illinois. Obviously, if the defendant had intended and expected that his first plea agreement would provide him with similar protection, he could and should have explicitly so stated that intention in the first agreement.



vent the government from subsequently charging the defendant with the June 6 offense.⁶

In December of 1981, the government promised to dismiss two counts against Ronald Strawser if he pled guilty to a third count of conspiracy to distribute 525 pounds of marijuana. The government fulfilled that part of the agreement. At that time, the government also agreed to present a recommendation of probation for Strawser to the court on his guilty plea. The government fulfilled that promise as well. From our view of the record, Strawser clearly has failed to present any evidence that the government on December 4, 1981 either expressly or impliedly promised not to prosecute him, i.e., provide him with blanket immunity for crimes he committed in its jurisdiction of which it was then unaware. Thus, we hold that the district court properly denied the defendant's Motion to Quash Prosecution. **AFFIRMED.**

APPENDIX

GUILTY PLEA AGREEMENT

Now comes the United States of America and the Defendant, RONALD STRAWSER, and Defendant's counsel, Richard Anderson, and advises this Court of the terms of a Guilty Plea Agreement reached between the parties. Said terms are as follows:

1. The Defendant, RONALD STRAWSER, will plead guilty to Count 2 of the Indictment herein, which charges RONALD STRAWSER with conspiracy to distribute and possess with intent to distribute approximately 525 pounds

⁶ Note that it is not entirely clear from the defendant's brief that this is his contention. We address it to answer any further question on the issue.



of marijuana, a Schedule I non-narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. The United States and RONALD STRAWSER agree, pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, that a sentence of five (5) years probation is the appropriate disposition of the case against RONALD STRAWSER in view of the substantial cooperation provided by RONALD STRAWSER to the Government prior to the date of this Plea Agreement.

3. The United States and RONALD STRAWSER further agree that at the conclusion of the second year of probation service, RONALD STRAWSER may petition this Court for an order terminating the remaining three year period of probation. The United States agrees that it will not oppose said petition, provided that it is of the opinion that RONALD STRAWSER has successfully completed the two years probation without incidence or infraction.

4. The United States agrees to dismiss Counts 1 and 7 of the Indictment herein against RONALD STRAWSER at the time of sentencing of RONALD STRAWSER on Count 2, provided acceptance of the Plea Agreement by this Court.

5. The United States further agrees not to call RONALD STRAWSER as a Government witness in the trial of *United States v. Hector Silvera, et al.*, Central District of Illinois, Criminal No. 81-30045.

6. RONALD STRAWSER acknowledges that he has been advised by counsel and does fully understand the following:

(a) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

(b) that he has the right to plead not guilty or to persist in that plea if it has already been made, and he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the



right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

(c) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere, he waives the right to a trial; and

(d) that if he pleads guilty or nolo contendere, the Court may ask him questions about the offenses to which he has pleaded, and if answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement; and

(e) that if he pleads guilty, he will waive his right to persist in his plea of not guilty, to be tried by a jury, to have assistance of counsel at the trial, and to confront and cross-examine witnesses against him at the trial.

A true Copy:

Teste:

*Clerk of the United States Court of
Appeals for the Seventh Circuit*

Opinion by Judge Coffey

JUDGMENT — ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

10

July 16, 1984.

Before

Hon. JESSE E. ESCHBACH, Circuit Judge

Hon. RICHARD A. POSNER, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 83-1251

vs.

RONALD STRAWSER,
Defendant-Appellant.

} Appeal from the United States
District Court for the Central
District of Illinois,
Springfield Division.
No. 82 CR 30067
Judge J. Waldo Ackerman

This cause was heard on the record from the United States District
Court for the Central District of Illinois,
Springfield Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by
this Court that the judgment of the said District Court in this cause appealed
from be, and the same is hereby AFFIRMED, in accordance with the opinion
of this Court filed this date.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

July 24, 1984

Before

Hon. JESSE E. ESCHBACH, Circuit Judge

Hon. RICHARD A. POSNER, Circuit

Hon. JOHN L. COFFEY, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 83-1251 vs.

RONALD STRAWSER,
Defendant-Appellant.

} Appeal from the United
States District Court for
the Central District of
Illinois, Springfield
Division.

No. 82 CR 30067
J. Waldo Ackerman, Judge.

ORDER

IT IS ORDERED, sua sponte, that the Opinion of this Court in the above-captioned matter, dated July 16, 1984, is amended as follows:

The district court number should be:

"82 CR 30067"

IT IS SO ORDERED.